

1 UNITED STATES DISTRICT COURT  
 2 WESTERN DISTRICT OF WASHINGTON  
 3 AT TACOMA

4 UNITED STATES OF AMERICA,	)	Docket No. CR05-5828FDB
5 Plaintiff,	)	Tacoma, Washington
6 vs.	)	March 5, 2008
7 BRIANA WATERS,	)	VOLUME 17
8 Defendant.	)	

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 11 TRANSCRIPT OF PROCEEDINGS  
 12 BEFORE THE HONORABLE FRANKLIN D. BURGESS  
 SENIOR UNITED STATES DISTRICT COURT JUDGE, and a Jury.

13 APPEARANCES:

14 For the Plaintiff: MARK N. BARTLETT  
 15 ANDREW C. FRIEDMAN  
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 Seattle, Washington 98101-1271

16 For the defendant: ROBERT BLOOM  
 17 Attorney at Law  
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19 NEIL M. FOX  
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 Tacoma, Washington 98402  
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25 Proceedings recorded by mechanical stenography, transcript  
 produced by Reporter on computer.

1 WEDNESDAY, MARCH 5, 2008 - 4:25 P.M.

2 \* \* \*

3 (Jury not present.)

4 THE COURT: Good afternoon, I guess it is.

5 I have shared with you a copy of the latest note from the  
6 jury. It is dated today at 3:45. What the note says is: "We  
7 are unable to reach a unanimous decision on all counts, how do  
8 we proceed?"

9 That's the issue on the table now. So I will hear from  
10 you folks about that.

11 MR. BARTLETT: Your Honor, I would suggest that the  
12 Court respond in writing, since this is always a tricky area,  
13 and I would suggest the following language. I suggest that  
14 the Court send back a note with this question:

15 "Have you reached a unanimous verdict on some counts? Do  
16 not provide any other information; please answer simply yes or  
17 no."

18 Once we get that answer, I think we can proceed on to  
19 perhaps the next step.

20 MR. BLOOM: I would agree.

21 THE COURT: Read that again.

22 MR. BARTLETT: "Have you reached a unanimous verdict  
23 on some counts? Do not provide any other information; please  
24 answer simply yes or no."

25 MR. BLOOM: I would mostly agree. I would just

1 change the language slightly. Have you reached a verdict on  
2 any count?

3 MR. BARTLETT: I think we need to put unanimous  
4 verdict.

5 THE COURT: You are agreeing, "have you reached a  
6 unanimous agreement on any count," am I hearing that?

7 MR. BARTLETT: I have no problem with that.

8 THE COURT: On any count; and the rest of it?

9 MR. BARTLETT: "Do not provide any other information;  
10 please answer simply yes or no."

11 THE COURT: All right. Are you in agreement with  
12 that?

13 MR. BLOOM: Yes.

14 THE COURT: Let me make sure I am reading exactly  
15 what you are saying here. You are saying the response to this  
16 is: "Have you reached a unanimous verdict on any count? Do  
17 not provide any other information, and simply answer yes or  
18 no."

19 MR. BLOOM: Yes.

20 MR. BARTLETT: Agreed.

21 THE COURT: All right. Let's take a recess.

22 THE CLERK: All rise, Court is in recess.

23 (Brief recess.)

24 THE COURT: All right, I have shared with you that  
25 answer. We'll talk about where we go from here. At this

1 point in time I know the jury wants to go home and come back  
2 in the morning. I am going to send them home and whatever  
3 else we take up, we'll do it in the morning and have them show  
4 back here.

5 MR. BARTLETT: If I could be heard. I would suggest  
6 we send a second note.

7 THE COURT: I will deal with you after I send them  
8 home. I want them to go home, come back and continue to do  
9 their job until I hear from them further.

10 MR. BARTLETT: I would suggest we take a partial  
11 verdict at this point in time. That we take the verdict with  
12 regard to the counts they have a unanimous verdict on and ask  
13 them to come tomorrow morning and deliberate on the counts  
14 they have not reached.

15 THE COURT: I don't want to do it that way.

16 I want to have them go home. They have answered the  
17 question, unless you think somebody is going to change their  
18 mind overnight and do something different. They said they  
19 have made a unanimous decision on something.

20 MR. BARTLETT: Why would we not take it tonight?

21 THE COURT: Because I am going to let them go home.  
22 I am going to go home, and I am going to take it in the  
23 morning. I am going to have them come back in the morning.

24 MR. BARTLETT: Your Honor, with all due respect --

25 THE COURT: I understand.

1           MR. BARTLETT: You know how long I have practiced in  
2 in front of this court. This has been a long trial. We are  
3 asking the Court's indulgence.

4           THE COURT: I know what you are asking, and I have  
5 thought about all of that before we came out.

6           MR. BARTLETT: It's five minutes extra time, Your  
7 Honor.

8           THE COURT: Somebody is going to let me run this  
9 courthouse here, if I can get you to do that. I have given  
10 you a decision. Like I have said all the time, I don't ask  
11 anybody to always agree with what I do, but I do ask you at  
12 some point to accept it, so I can move on.

13          Can I ask that? Is that too much?

14           MR. BARTLETT: I am accepting it, Your Honor.

15           THE COURT: All right. Bring them in.

16           MR. FOX: I would ask you admonish them the same as  
17 yesterday, not to view the news.

18           THE COURT: I don't have to be reminded every day how  
19 to do this job.

20           MR. FOX: I am not reminding you. I am asking you.

21           THE COURT: Okay, bring them in.

22          (Jury present at 4:45 p.m.)

23           THE COURT: All right. You may be seated.

24          Good afternoon to you, too.

25          I understand from your note where we are, but I am going

1 to recess this case until the morning and have you come back  
2 and report like you've been reporting.

3 Of course, when you leave, leave everything about this  
4 case in the jury room. As you go about your business, of  
5 course you are not to discuss anything about the case with  
6 anybody. Avoid TV, newspaper, and all those things I keep  
7 saying, as you go about your business. You are not through  
8 with all you have to do. So when you report back to the jury  
9 room, I expect all of you to be there at the same time and  
10 keep deliberating until you are called in by the Court to do  
11 otherwise.

12 All right. I want you to have a good evening. I will see  
13 you back here ready to go at 9:00 in the morning.

14 (Jury excused at 4:48 p.m.)

15 THE COURT: All right, any need to further talk about  
16 anything involving this before we have them back here and see  
17 tomorrow?

18 MR. BARTLETT: I have language that I am going to  
19 suggest that the Court provide the jury tomorrow. I can  
20 either do it now or do it tomorrow morning.

21 THE COURT: If you have it now, you can share it with  
22 us now.

23 You may be seated.

24 MR. BARTLETT: I would suggest that with regard to  
25 the bottom of the note that we've already sent back to the

1 jury, that the Court provide them the following message:

2 "Please fill in the verdict form with regard to any count(s)  
3 as to which you have reached a unanimous verdict. Do not  
4 provide any information with regard to any count(s) as to  
5 which you have not reached a unanimous verdict."

6 THE COURT: Please give us that. I didn't get that  
7 down. Anything to share about that from defense counsel?

8 MR. BLOOM: I would like to think about it overnight.

9 THE COURT: Have you received a copy of that?

10 MR. BLOOM: It was just handwritten. He shared it  
11 with us, but we don't have a copy.

12 THE COURT: Would you make a copy and we'll have a  
13 discussion on that in the morning?

14 Anything else?

15 MR. FOX: What time do you want us here?

16 THE COURT: Let me have you folks here around 10:00  
17 like I have been doing. I will have you here at 10:00.

18 MR. BARTLETT: Your Honor, if we were here at 9:00,  
19 we could get this question answered with regard to the jury.

20 THE COURT: That would be fine. I can't be here  
21 until about 10:00. So that's why I say 10:00.

22 I may be here before that. If you are gathered here when  
23 I can get here -- I have a thing I am dealing with and there's  
24 a range, and I don't know whether I will be able to keep my  
25 appointment.

1 MR. BARTLETT: Would the Court prefer we stay around  
2 and get this resolved, so even if the Court wasn't here, we  
3 could have at least this resolved before tomorrow?

4 THE COURT: You mean the two of you in agreement?

5 MR. FOX: Your Honor, I would like to do some  
6 research on partial verdicts.

7 MR. BARTLETT: Fine.

8 THE COURT: I guess that answers that question.  
9 See you tomorrow.

10 THE CLERK: All rise, Court is in recess.

11 (The Court recessed to Thursday, March 6, 2008, at  
12 the hour of 10:00 a.m.)

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15 C E R T I F I C A T E

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17 I certify that the foregoing is a correct transcript from  
18 the record of proceedings in the above-entitled matter.

19

20 /S/ Teri Hendrix \_\_\_\_\_ May 5, 2008

21 Teri Hendrix, Court Reporter Date

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